



Draft Key Water Challenges and Proposed Action Plans

Fall 2021

Introduction

After nearly 50 years of implementation and targeted adjustments, the Water Use Act and associated regulations and policies need a comprehensive review to ensure that water administration and management is serving the current and future water needs of Montana. Benefits of this review include streamlined and consistent administrative processes, improved customer service, responsible and innovative development, and efficient administration of Montana's water resources. The results of this effort must also uphold the core principles of the Water Use Act for current and future water appropriators. This review of water right administration and management requires significant stakeholder input and a comprehensive look so that Montana can meet its water needs of the 21st Century.

To that end, the DNRC Water Resources Division (WRD) developed these *Draft* Key Water Challenges and proposed Action Plans based on input received during the Governor's Red Tape Initiative and executive branch feedback, as well as WRD's stakeholder listening sessions, comments, and an online public survey. Many of these challenges were also identified in the 2015 State Water Plan and in discussions with the Water Policy Interim Committee. These *Draft* Key Challenges aim to comprehensively address water administration and management over the course of the next three biennia. The proposed Action Plans describe the initial steps we, as a state, will take to address these challenges. These proposed Action Plans are not final solutions in and of themselves but rather a roadmap by which we can craft solutions with stakeholders.

WRD is now seeking additional input from the Montana water community to ensure that these identified *draft* key challenges are comprehensive, reflect stakeholder priorities, and proposed action plans are appropriate. These challenges and action plans will be modified based on additional feedback. WRD will be hosting a public meeting on November 15th, collecting public comment via a new online survey, and having additional one-one-one stakeholder meetings as requested. The following section outlines the *draft* Key Challenges and proposed Action Plans.

1. Evaluate and define roles, responsibilities, and a framework for the administration of water rights post final decree.

Why: Over the past ten years, questions have arisen about the future roles of the judiciary, water commissioners, and the DNRC. As some basins in Montana near completion of the adjudication of pre-1973 “existing water rights,” there will be an increased focus and need for administration of all water rights on a source (i.e., existing rights, permits, certificates, water reservations, and compacted federal reserved water rights). Montana needs to clearly define the roles for administration and management of water rights to ensure a smooth transition to post-adjudication distribution, management, and enforcement roles.

Action Plan:

1. WRD will develop and vet with stakeholders a policy for prioritizing complaints and enforcement actions with respect to violations of the Water Use Act (2021).
2. WRD will lead a facilitated stakeholder¹ conversation on the roles and responsibilities of water administration post final decree. Beginning in early 2022, stakeholders will begin discussion of these topics:
 - Current and post-adjudication roles and jurisdictions² of district courts, water courts, and DNRC,
 - Finality of final decrees; and
 - Water commissioner training, oversight, and enforcement of decrees.
3. The recommendations from these efforts may lead to draft legislation for the 2023 legislative session.

2. Evaluate and update the water right application process so that it is timely, transparent, streamlined, and consistent.

Why: The water right permit and change processes are complex and the law places the burden of proof on the applicant to meet the statutory criteria. The implementation of existing regulations, policies, procedures, and guidance can lead to longer processing times and inconsistent outcomes based on unique variables. Stakeholders have requested a simplified process with increased regulatory certainty.

Action Plan:

1. Based on stakeholder feedback from listening sessions, online public surveys, and additional comments WRD will form an internal working group, and solicit additional stakeholder

¹Stakeholders will represent broad interests, including, but not limited to, agriculture, industry, municipalities, conservation, hydropower, judiciary, tribal, local government, and legislative.

² Including McCarren amendment compliance

feedback, to make recommendations to WRD leadership on the following (beginning in 2022):

- Elimination, revision, and/or necessary rulemaking for regulations, policies, procedures, and guidance; and
 - Improvements to application forms, addenda, instructions, and decision documents.
2. WRD will conduct audits of internal processes across the WRD bureaus and regional offices to identify best practices, methods to ensure consistent implementation of water processes, and resources and training necessary to ensure consistent applications (2022).
 3. WRD will implement procedures that provide transparency to the public and assist with timely processing of applications (ongoing).

3. Due to increasingly unreliable water resources, evaluate the coordination of water development, use, and protection to meet new demands in Montana.

Why: Montana lacks comprehensive policies that efficiently protect existing uses while responding to current and future demands. New development is constrained by existing demands and basin closures, and therefore increasingly relies on exceptions to the permitting process. These exceptions lead to unsustainable water use and conflicts between water users. Montana needs to revise and modernize policies around mitigation of new uses, permit exemptions, and the water right permit and change processes.

Action Plan:

1. WRD will work with a 3rd party facilitator to convene stakeholder groups to address the following issues:
 - Define what improvements are needed for the water right change and permit application processes (e.g., role of modeling and in what ways modeling informs decisions; how “adverse effect” is defined)
 - Determine what statutes, regulations, and/or policies are needed to establish an effective mitigation and marketing framework;
 - Identify necessary tools to address local water administration needs (e.g., incentives, controlled groundwater areas, stream depletion zones, mitigation banks); and,
 - Evaluate the role of permit-exempt wells to meet future demand.
2. The recommendations from these efforts may lead to draft legislation for the 2023 legislative session.

4. Develop tools, information, and policy recommendations to support drought adaptation and mitigation efforts of Montana communities and businesses.

Why: Drought is a regularly occurring characteristic of Montana’s climate. Some portion of Montana has experienced drought in 20 of the last 21 years. According to the [Montana Climate](#)

Assessment, future droughts in Montana are likely to be more frequent and intense due to warming air temperatures and decreasing snowpack. Developing information that communities can use to prepare for drought and crafting policies and programs to reduce the impacts of drought are critical for long-term social, economic, and ecologic resilience and sustainability.

Action Plan:

1. WRD will update the 1995 State Drought Plan (Plan) (2021/23). The Plan will build upon Montana's past drought resiliency efforts using a collaborative, stakeholder driven process that expands and improves statewide monitoring, preparedness, response, and adaptation. Collaboration between WRD and seven regional stakeholder groups, building upon local watershed plans and strategies, will be a central tenant of the planning process. The Plan will provide policy recommendations that support drought adaptation and mitigation efforts of Montana communities and businesses.
 2. WRD will develop and host an interactive drought information website as a communications, education, and outreach hub. The site will provide regular updates on the planning process to interested stakeholders; disseminate educational information about drought and adaptive drought planning; allow users to report drought impacts in their area; provide access to tools for evaluating regional and state-wide drought conditions; and provide access to resources for adapting to, and mitigating against, drought impacts (2022).
 3. The recommendations from these efforts may lead to draft legislation for the 2025 legislative session.
5. Create meaningful stakeholder engagement processes, which are critical to ensure comprehensive, sustainable, and lasting water policy decisions.

Why: Open, honest, consistent, and effective communication with decision-makers, stakeholders, and the public is essential to the success of the WRD's role in the management and the administration of Montana's waters. External engagement and input are a precondition for sustainable, implementable, and lasting water resource policy decisions. This dialogue builds trust, respect, ownership, and understanding amongst the diverse communities we serve.

Action Plan:

1. WRD Leadership will work with stakeholders to better understand engagement needs and develop a Stakeholder Engagement Plan (Plan). The Plan will guide WRD's outreach and engagement activities with stakeholders and decision makers (2022).
2. WRD will establish and work with a Stakeholder Advisory Committee (STAC) on which policies should be formalized in administrative rule and go through the MAPA process. WRD will then use the STAC to gather input on policy decisions and rules or standards prior to finalization (2023).

3. WRD will form an ongoing internal committee to support development and implementation of stakeholder engagement plans, assess feedback, monitor progress, and update the WRD Stakeholder Engagement Plan on a biennial basis (2023+).

6. Develop robust educational resources, tools, and training opportunities on water processes.

Why: Water management is complicated, not only because of water's finite and variable nature, but also because water policy is dynamic and constantly evolving. Continual demographic, and economic shifts, as well as changes in how society values water, will always bring new stakeholders into contact with Montana's water processes. Consistent and proactive water education and outreach activities are necessary to provide a foundation for the informed management of Montana's water resources now and into the future.

Action Plan:

1. WRD will expand on current efforts to create and deliver public awareness and training programs. Outreach and Education topics may include:
 - Water rights 101;
 - How to obtain a new water right;
 - Adjudication process; and
 - How to access water data through the Water Rights Query System (2022).
2. WRD will leverage multiple formats for Outreach and Education including- public meetings, newsletters, technical trainings and workshops, webinars, and public service announcements (2022 -2023).

7. Update the Water Right Query System (WRQS) to be a user-friendly tool that easily provides access to full, accurate, detailed information about Montana water rights.

Why: The WRQS is based on end-of-life technology. The current system needs increased functionality and ease of use, capitalizing on improved technology, to address stakeholder needs.

Action Plan:

1. WRD will continue to work with stakeholders to solicit and analyze the needs of the WRQS to improve customer service and ease of use (ongoing).
2. WRD will develop and replace WRQS based on stakeholder input (end of 2022).
3. WRD will conduct a business analysis aimed at documenting and formulating plans on how to further leverage and enhance the WRQS. These analyses will include but not be limited to:
 - Integrating Water Court Case files into the scanned documents (2023-2025),

- Integrating water right application materials into the scanned documents at the time of public notice (2023-2025),
- Integrating enhanced GIS/Mapping capabilities to the WRQS (2023-2025); and
- Making scanned materials easier to understand and act upon (2025-2027).

8. Update the WRD website to be an intuitive, searchable, and a meaningful place that provides up to date information on water resources.

Why: WRD’s current website does not provide the public the ability to easily and intuitively find the information they need. A new website will provide tools, resources, and information driven by public needs, metrics of use, and keyword searching. This new website will allow WRD to optimize search engine functionality around high value keywords allowing the public to easily find an authoritative landing page.

Action Plan:

1. DNRC has hired a contractor to develop a website overhaul plan for the agency, including the WRD pages (2022). WRD will incorporate the needs of public stakeholders in this process and will continue to listen to and enhance the new website in an agile fashion moving forward. As part of our website overhaul, WRD plans enhanced services around but not limited to:
 - Easily searchable forms, policies, memos, manuals, and standard practice documents (2022),
 - Enhanced abilities to find and contact the right people (2022),
 - Centralized drought information and planning work (2022),
 - Online forms (2023-2025),
 - Easily searchable Office of Administrative Hearings decisions; and
 - Seamless integration with the WRQS (2023-2025).